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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,160	03/05/2002	Mihaelos N. Mihalos	67328	6020

4955 7590 09/29/2004

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/091,160

Applicant(s)

MIHALOS ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Applicant's election with traverse of Group I claims 1-10 in the reply filed on 7/2/04 is acknowledged. The traversal is on the ground(s) that there is simply no way to search the claims of any of the groups thoroughly without searching for the other. This is not found persuasive because applicant has not presented any evidence to show that the search for one group to be thorough must require the search of the other group. The two inventions are directed to two distinct inventions because one is related to a method and other one is related to a product. The restriction shows that two inventions are distinct and applicant has not argued why they are not distinct. The finding of references which make obvious one invention does not make obvious the other invention. While the claims all relate to cold formed food bars, one invention is directed to method claims of how the bar is made and one is directed to a food product itself. They are two distinct inventions.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the recipe in "Excellent No Bake Cookie/Candy Collection" by Sherry Lewis in view of Froseth et al

Lewis recites a recipe for "Graham Cracker Peanut Butter Special" in which no baking is required. The recipe calls for mixing peanut butter, cracker crumbs, butter and sugar, patting firmly in a dish and chill, pouring chocolate over the mixture and cutting into squares.

The recipe does not teach the steps as recited in claims 1 and 6, the amounts of sugar, fat as claimed, the inclusion of cereal pieces, the cookies crumb having the size as claimed and individually wrapping the product.

Froseth et al disclose a method of making a layered cereal bar. The cereal layers are made by the steps of mixing a binder with cereal pieces to form a mass and compressing the mass into layer. The method uses devices including beltless compressing rollers that operate in series to combine the cereal pieces and binder; the rollers rotate in the same direction as a conveyor below. The cereal pieces and binder is mixed in a mixer. The mixture moves onto a belt where it is formed into beds; each bed is then passes through a series of compression rollers to compress the bed to any suitable dimension. (see col. 2 lines 25-45, col. 17 line 45 through col. 18 lines 56)

It would have been obvious to one skilled in the art to use a commercial process as taught by Froseth et al when one wants to make the product as taught in the recipe for commercial distribution. The butter in the recipe is the fat; while the claims recite

filler fat and coating fat, there is no distinction made between the two fats. Both of the fats are mixed with the cookie pieces and sugar. It would have been obvious to one skilled in the art to use any varying amount of fat and sugar depending on the fat content desired for the product and the degree of sweetness desired. It would have been obvious to break the cookie into any size depending on the taste perception and the texture desired. For example, if a noticeable taste is wanted of the cookies, it would have been obvious to break them into relatively large size; however, if the reverse is wanted, it would have been obvious to break the cookies into very fine size. It would also have been obvious to break the cookies into any intermediate size between the two end points. The size selected would have been an obvious matter of preference. When using a commercial process as taught by Froseth et al, it would have been obvious to one skilled in the art to determine through routine experimentation the optimum parameters such as temperature, time of mixing, feeding, cutting etc.. to obtain the most optimum product. Optimization is within the skill of one in the art. It would also have been obvious to include cereal pieces in the recipe product when desiring to obtain different texture and flavor. Cereal pieces give crunchy texture and flavor from the cookies. It is notoriously well known in the art to add different type of ingredients in food bar. It would have been obvious to wrap the product individually when the product is made for commercial distribution.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 19, 2004

  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*